

REMARKS

Applicant has carefully reviewed the Final Office Action of July 13, 2005 and offers the following remarks in response thereto. Applicant appreciates the telephonic interview of September 7, 2005 with Examiners Gold and Salad. Where appropriate, comments from that telephonic interview are included below. To the extent necessary, the comments provided below serve as the Interview Summary required by the MPEP.

Claims 1-47 and 50 were rejected under 35 U.S.C. § 103 as being unpatentable over Denecheau et al. (hereinafter "Denecheau"), in view of McCanne, further in view of Kilkki et al. (hereinafter "Kilkki"). Applicant respectfully traverses. For the Patent Office to combine references in an obviousness rejection, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Even if the Patent Office makes a proper combination, to establish *prima facie* obviousness, the Patent Office must show where each and every element of the claims is taught or suggested. MPEP § 2143.03.

Applicant initially traverses the rejection because the Patent Office has not properly supported the motivation to combine Denecheau and McCanne. Specifically, the Patent Office asserts that the motivation to combine the reference is "because it makes use of sophisticated application-level knowledge." (Office Action of July 13, 2005, page 3, lines 20-21). However, the Patent Office fails to provide any evidence to support this motivation. Since the motivation lacks the requisite evidence, the motivation is improper. Since the motivation is improper, the combination is improper. Since the rejection is based on an improper combination, the rejection is improper. Applicant requests withdrawal of the rejection on this basis.

Even if the combination of Denecheau, McCanne, and Kilkki is proper, a point which Applicant does not concede, the combination does not teach the claimed invention. The Patent Office admits that Denecheau and McCanne do not teach or suggest the use of a routing node including a control plane, a compute plane, and a forward plane. (Office Action of July 13, 2005, page 4, lines 1-2 and page 9, lines 17-18). The Patent Office relies on Kilkki for the missing element. Specifically, the Patent Office states:

Kilkki teaches a method and apparatus for reducing network node congestion by filtering out comparatively low priority packets prior to execution of other node functions such as routing and switching. Kilkki teaches the filtering of packets

which are then forwarded and processed by different functions (col. 4, lines 27-39); which is the same purpose as the three planes.

(Office Action of July 13, 2005, page 4, lines 3-7 and page 9, line 19-page 10, line 2). Applicant has studied the cited passage of Kilkki and finds no teaching or suggestion of the three plane structure recited in the claims. Kilkki, col. 4, lines 27-39 states in full:

In accordance with one embodiment of the invention, a method for reducing the volume of packets requiring processing by network packet functions of a network node is provided. The method is applicable for use in networks having at least one network node capable of routing information packets between one or more node inputs and one or more node outputs. The information packets are intercepted prior to their input to the network node. A portion of the intercepted packets are filtered out based on parameters corresponding to a probable packet acceptability at the network node. The remaining portion of the intercepted packets are forwarded to the network node for processing by the network packet functions.

As stated in the passage, the packets are intercepted prior to input to the node, thus the node does not include the filter. Further, it is not readily apparent which elements correspond to the three planes of the claim. The Patent Office recognizes this deficiency of Kilkki because the Patent Office does not state which elements of the reference correspond to the three planes of the claims. The Patent Office states only that the functions "is [sic] the same purpose of the three planes." Merely because something has the same function as a later claimed invention does not preclude the patentability of the later claimed invention. During the telephonic interview, Applicant's representative raised this point with the Examiners. Examiner Salad responded by stating that the Background section of the application admitted that control and forward planes were known. While the Background does mention these elements, the Background was not used in the rejection. Likewise, there has been no indication as to what the motivation for combining the Background with Denecheau, McCanne or Kilkki would be. Still further, the use of the Background does not teach a compute plane with the recited functionality.

Applicant respectfully maintains that Kilkki does not teach or suggest a node with a compute plane, a forward plane, and a control plane with the specific functionality as recited in each of the independent claims. Since the other references admittedly do not teach or suggest this element, and Kilkki does not teach this element, the combination of references in the Office Action cannot teach or suggest this element. Since this combination of references does not teach

or suggest the claim element, the independent claims (all of which recite the claim element) are not obvious.

Applicant further notes that the compute plane provides application level support. Kilkki does not teach this element either. During the telephonic interview, Examiner Salad implicitly agreed that Kilkki did not show the compute plane with the application level support functionality and indicated that another search would be needed for a reference that showed a router with a plane that performed the application level support function of the compute plane. The Examiner further indicated that if such a reference could be found and properly combined into the current rejection, then a new rejection would be necessitated. However, Examiner Salad also indicated that a response should be filed regardless of the search, so as to preserve Applicant's procedural rights after final.

Applicant requests withdrawal of the § 103 rejection of claims 1-47 and 50 on these two bases as well.

Claims 48 and 49 were rejected under 35 U.S.C. § 103 as being unpatentable over Denecheau, McCanne, Kilkki, and further view of Chiu et al. (hereinafter "Chiu"). Applicant respectfully traverses. The standards for establishing obviousness are set forth above.

Applicant initially traverses the rejection for the reasons outlined above which relate to both the deficiencies of the evidence to support the combination and the deficiencies of the combination itself.

Applicant further traverses the rejection because the Patent Office has not supported the motivation to combine Chiu. Specifically, the Patent Office asserts that the motivation is "because it would allow for more ways to route the traffic which would provide more efficient routing overall." (Office Action of July 13, 2005, page 12, lines 13-16). However, this motivation lacks any evidence from the Patent Office. As such, the motivation is improper. Since the motivation is improper, the combination is improper. Since the combination is improper, the rejection based on the combination is improper. Applicant requests withdrawal of the § 103 rejection on this basis as well.

Applicant requests reconsideration of the rejections in light of the remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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